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Case No. 15 C 9543

<sup>1</sup> Although the First Amended Complaint filed on Middleton's behalf by the trial bar member designated to serve as his counsel also lists "John and James Does 1-10" among the defendants, no known individual has yet been named to replace the "Doe" references.

unless the pleader disclaims the ability to have formed a belief about the allegation. And if that requirement is taken seriously, there is really no question that a good many of Middleton's allegations cannot be met with that creative -- but impermissible -- departure from Rule 8(b)(5)'s requirements. Such a practice, regrettably encountered in a substantial number of responsive pleadings in this District Court's cases, flouts the principle of notice pleading that should be followed by parties on both sides of the "v." sign. After all, the real function of pleading is to make plain just what matters are and what matters are not in controversy between the litigants.

Nor is it sound practice for Shebel's counsel to follow what should be a straightforward admission of allegations that justify such candor with gratuitous "denials" that Middleton "has properly stated a cause of action or is otherwise entitled to the relief he seeks" (see Answer ¶¶ 1 through 4). If Shebel's counsel believes that such a contention can be advanced in good faith when Middleton's allegations are accepted as true (together with reasonable favorable inferences), as Rule 12(b)(6) requires, that position must be presented up front by a properly supported motion, rather than leaving the contention as a ticking time bomb available to be exploded at some future date.

In summary, the existing Answer is stricken, but with leave granted to file a self-contained Amended Answer to the FAC on or before June 20, 2016. Because Shebel's counsel is a member of the State's Attorney Office rather than outside counsel, there is no need to include a directive that no charge should be made to the client for the correction of counsel's errors.



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Milton I. Shadur  
Senior United States District Judge

Date: June 6, 2016

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